

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BUILDING CODE APPEALS BOARD
DOCKET NO.: 11-1043

_____)
Myles Burke,)
Appellant)
)
v.)
)
Building Official Certification)
Committee,)
Appellees)
_____)

BOARD'S RULING ON APPEAL

Introduction

This matter came before the State Building Code Appeals Board ("Board") on appellant's appeal of the Building Official Certification Committee's ("Committee") decision that the appellant did not possess the minimum qualifications necessary to sit for the building official certification examination as required by 780 CMR 110.R7 to become Inspector of Buildings. For the following reasons, the appellant's case will be remanded to the Committee for the appellant to present specific information regarding his qualifications and work experience.

Procedural History

The Board convened a public hearing on September 20, 2011, in accordance with G.L. c. 30A §§ 10 & 11; G.L. c. 143, § 100; 801 CMR 1.02; and 780 CMR 122.3. All interested parties were provided with an opportunity to testify and present evidence to the Board.

Findings of Fact

The Board bases the following findings upon the testimony presented at the hearing. There is substantial evidence to support the following findings:

1. The appellant is employed as Inspector of Buildings for the Town of Wareham.
2. The appellant was employed for three years as the Commissioner of Inspectional Services for the City of Lawrence.
3. The appellant was employed for five years as the chief administrative official for the mayor of the City of Lawrence.
4. The job description for the chief administrative official for the mayor of the City of Lawrence states that the official is responsible for the oversight of the use, repair, and maintenance of all city property.

5. The appellant worked with the Lawrence Housing Authority for 15 years, during which he conducted over 1200 inspections per year and supervised the construction of housing unit programs.
6. The appellant possesses a valid construction supervisor license.
7. The Committee determined that the appellant does not possess a minimum of five years of experience in supervision of building construction, the alternative four year undergraduate degree in a field related to building construction and design, or any combination of education and experience with equivalent knowledge and ability as required by 780 CMR 110.R7.
8. The Committee determined that the appellant does not meet the minimum qualifications required to sit for a building official examination.

Analysis

A. Jurisdiction of the Board

There is no question that the Board has jurisdiction to hear this case. The governing statute provides that:

Whoever is aggrieved by an interpretation, order, requirement, direction or failure to act by any state or local agency or any person or state or local agency charged with the administration or enforcement of the state building code or any of its rules and regulations, except any specialized codes as described in section ninety-six, may within forty-five days after the service of notice thereof appeal from such interpretation, order, requirement, direction, or failure to act to the appeals board. G.L. c.143 §100.

The issues giving rise to this matter directly implicate provisions of the Code. As such, this Board has jurisdiction to decide this case pursuant to G.L. c. 143, §100.

B. State Building Code requirements

The issue in this case is whether the appellant is qualified to sit for the building official certification examination as outlined in 780 CMR 110.R7. 780 CMR and M.G.L. c. 143 § 3 require that an inspector of buildings or building commissioner:

[H]ave had at least five years of experience in the supervision of building construction or design or in the alternative a four year undergraduate degree in a field related to building construction or design or any combination of education and experience which would confer equivalent knowledge and ability, as determined by the board. M.G.L. c. 143 § 3.

The appellant testified that he was employed for five years as the chief administrative official for the mayor of the City of Lawrence, during which he gained supervisory experience. The appellant testified that in that position, he visited many construction sites at which his role was to check the overall quality of workmanship as well as to ensure that plans were being followed and money was not being wasted. The appellant further testified that he assisted a contractor in the design and construction of two of his own homes in Lawrence, and that he designed and constructed several safety station kiosks along the Merrimack River. The appellant testified that he possesses the requisite five years of supervisory experience, but that he did not adequately present the specifics of

his experience, particularly that of his five years working for the mayor of Lawrence, to the Committee.

Conclusion

A motion was made by Alexander MacLeod and seconded by Jacob Nunnemacher to defer the appellant back to the Committee to present specific details regarding his qualifications and experience in order to prove his eligibility to sit for the building official certification examination. The Board stated that the appellant should provide to the Committee a copy of his application for a construction supervisor license as well as specific documentation concerning the housing projects that he supervised. The motion passed.



Alexander MacLeod

Jacob Nunnemacher

Doug Semple

Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to Superior Court in accordance with G.L. c.30A, §14 within 30 days of receipt of this decision.

DATED: November 28, 2011